IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1414 of 2007

D.Poomani .. Petitioner

Vs

1. The State of Tamil Nadu,
   rep. by its Secretary to Govt.,
   Dept. of Prohibition and Excise,
   Fort St. George, Chennai.

2. The District Collector and
   District Magistrate, Villupuram
   District, Villupuram. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus call for the records in C2/39794/2007 dated 9.9.2007 on the file of Second Respondent herein and quash the same as illegal and direct the respondents to produce the detenu M. David, S/o Mariyanatha, now confined at Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, wife of the detenu by name David, who was incarcerated at Central Prison, Cuddalore, by an order dated 9.9.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed in C2/39794/2007, to quash the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

2. The ground case, which led to the passing of the order of detention, was registered on the basis of the complaint given by one Ravi. According to the complainant, on 16.8.2007 at about 12.30 hours, when he along with two others was standing near Savitha

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Theatre, the detenu and another, who were already known to the complainant, came to the complainant and demanded Rs.2,000/- and when the complainant refused, the detenu and the other person took veecharuvals and inflicted cut injuries and snatched Rs.950/- from his shirt pocket. When the general public, who gathered there, tried to catch hold of the accused, they picked up soda bottles and hurled against the public, which scattered all over the road. Out of fear and danger to their lives, the public ran helter shelter and the accused wielded their aruvals against the public, resulting in the traffic dislocation and panic situation and taking advantage of the same, the accused persons escaped from the spot along with the robbed amount. Based on the complaint, a case was registered on the file of Villupuram Town Police Station in Crime No.572 of 2007 for the offence under Section 397 IPC and the detenu was arrested and produced before Judicial Magistrate No.I, Villupuram, who remanded him to judicial custody.

3. The second respondent, taking note of the above ground case and finding two adverse cases on the file of same police station, in Crime Nos.323/07 and 594/2007 for offences under Sections 147, 148, 307, 294(b) IPC. and also under Section 3 of the Explosives Substances Act, 1908, having satisfied that there is compelling necessity to detain the detenu in order to prevent him from indulging in such activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. Since the learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in considering the representation of the detenu, we do not propose to go into other aspects, as the said ground has to succeed.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to

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consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6.Coming to the case on hand, admittedly, objecting to the order of detention dated 9.9.2007, a representation was made on behalf of the detenu on 24.9.2007, which was received by the Government on 26.9.2007. Remarks were called for from the detaining authority on 27.9.2007, who, in turn, called for parawar remarks from the sponsoring authority on 29.9.2007, but the same were received only on 6.10.2007, i.e. after a delay of seven days, which is not properly explained. Thereafter, on receipt of the remarks on 11.10.2007, the file was circulated on 12.10.2007, on which date, the Under Secretary and the Additional Secretary considered it. The Minister concerned dealt with the file on 15.10.2007 and rejected the same. The rejection letter was prepared on 17.10.2007 and it was sent on 18.10.2007 and served on the detenu on 20.10.2007. It is evident from the above that even if we exclude the intervening holiday, viz. 30.9.2007 (being Sunday), still there is delay of six days on the part of the sponsoring authority in sending the parawar remarks called for by the detaining authority, which is admittedly unexplained and inexcusable.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty,

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continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is delay of six days on the part of the sponsoring authority in sending the parawar remarks, which rendered the detention illegal and hence, we are inclined to allow this petition.

In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
of Tamil Nadu, Prohibition and
Excise Department, Fort St. George,
Chennai 600 009.

2. The District Collector and
District Magistrate, Villupuram
District, Villupuram.

3. The Superintendent
Central Prison, Cuddalore.

4.The Joint Secretary to Govt,
(Law & Order) Department,
Fort St George, Chennai.9.

4.The Public Prosecutor,
High Court, Madras.

KSJ (co)
sg 04/01/08

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